REPORT | FIFTH SESSION | THIRTY-NINTH PARLIAMENT

Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills

Review of the *Members' Conflict of Interest Act*

LEGISLATIVE ASSEMBLY
PROVINCE OF BRITISH COLUMBIA

MARCH 2013

March 14, 2013

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

I have the honour to present herewith the Report of the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills on its review of the *Members' Conflict of Interest Act* (RSBC 1996, c. 287).

The Report covers the work of this Committee from April 18, 2012 to March 13, 2013.

Respectfully submitted,

Colin Hansen, MLA
Chair

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Composition of the Committee

Members

Colin Hansen, MLA	Chair	Vancouver-Quilchena
Harry Lali, MLA	Deputy Chair	Fraser-Nicola
Donna Barnett, MLA		Cariboo-Chilcotin
Bill Bennett, MLA*		Kootenay East
Jagrup Brar, MLA		Surrey-Fleetwood
Murray Coell, MLA		Saanich North and the Islands
Mike Farnworth, MLA		Port Coquitlam
Randy Hawes, MLA		Abbotsford-Mission
Jenny Wai Ching Kwan, MLA		Vancouver-Mount Pleasant
Norm Letnick, MLA*		Kelowna-Lake Country
Mary McNeil, MLA**		Vancouver-False Creek
Jane Thornthwaite, MLA**		North Vancouver-Seymour

*Committee member to September 17, 2012

**Committee member from September 17, 2012

Committee Staff

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees

Byron Plant, Committee Research Analyst

Terms of Reference

On March 15, 2012 and February 26, 2013, the Legislative Assembly authorized the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills to examine, inquire into and make recommendations on the matter of the *Members' Conflict of Interest Act* (RSBC 1996 c. 287).

In addition to the powers previously conferred upon the said Committee by the House, the Committee is empowered:

a. to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;

b. to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;

c. to adjourn from place to place as may be convenient; and

d. to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

Executive Summary

On March 15, 2012 the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills (the Committee) was authorized to "examine, inquire into and make recommendations on the matter of the *Members' Conflict of Interest Act* (RSBC 1996 c. 287)." The Act provides a framework for dealing with conflicts of interest involving Members of the Legislative Assembly. It also makes provision for the appointment of the Conflict of Interest Commissioner, an independent officer of the Legislative Assembly. Introduced in 1990, the Act has been reviewed only once by an all-party parliamentary committee (1997-1999).

As part of its review of the Act, the Committee agreed to hold public consultations and to hear presentations from expert witnesses. Conflict of Interest Commissioner Paul Fraser, Q.C. was also invited to provide commentary on the Act. During the months that followed, the Committee received two briefings from the Commissioner, along with three formal written submissions containing detailed proposals and draft amendments. In addition, five expert witnesses made presentations to the Committee. Ten written submissions were received from members of the public during the seven-week consultation period.

In the course of its inquiry, the Committee heard support for the existing legislation. Submissions described how the Act continues to serve its intended purpose and provides an effective statutory framework for Members' conflict of interest. Several proposals were also made to update and improve the Act, through the incorporation of new sections and changes to existing provisions.

This report makes 34 recommendations that are designed to modernize and enhance the Act and the role of the Commissioner. They include recommendations to expand the powers and jurisdiction of the Commissioner, to update and clarify existing provisions, and to promote greater transparency of Members' financial disclosure statements. It is also recommended that the Act be amended to allow for future reviews of the legislation.

The Statutory Framework

Introduced in 1990, the *Members' Conflict of Interest Act* provides a statutory framework for dealing with conflicts of interest involving Members of the Legislative Assembly. The Act defines conflict of interest and prohibits a Member from exercising an official power or performing an official duty or function if he or she has a conflict of interest or an apparent conflict of interest. Each Member is also required to file with the Commissioner a confidential financial disclosure statement containing information relating to the Member's assets, liabilities, financial interests, and other information prescribed by regulation. In addition, the Act contains post-employment restrictions for former members of Executive Council (cabinet) and parliamentary secretaries.

The Act makes provision for the appointment of the Conflict of Interest Commissioner, an independent officer of the Legislative Assembly. The Commissioner's responsibilities include providing opinions and advice to Members, conducting inquiries, and recommending penalties for contraventions of the Act. The Commissioner also receives Members' confidential financial disclosure statements, prepares public disclosure statements, and reports annually to the Legislative Assembly. The Commissioner has the power to make regulations, subject to the approval of the Lieutenant Governor in Council, prescribing any matter contemplated in the Act. The *Members' Conflict of Interest Act Regulation* (BC Reg 266/2010) contains the existing forms used for Members' confidential disclosure statements.

In accordance with the Act, a person may be appointed Commissioner by the Lieutenant Governor in Council on the motion of the Premier in the Legislative Assembly and on the recommendation of two-thirds of the Members present. The term of the appointment is five years and may be renewed for a further term or terms. Compensation for the Commissioner is set by the Lieutenant Governor in Council and is currently 75 percent of the annual salary of the Auditor General, who receives a salary equal to that of the Chief Judge of the Provincial Court of British Columbia

1997-1999 Statutory Review

Between 1997 and 1999, the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills undertook the first review of the *Members' Conflict of Interest Act*. The review included presentations by five expert witnesses, including then Commissioner H.A.D. Oliver and former Commissioner Ted Hughes. Thirty-four written submissions were also received from members of the public. The Committee's final report, released on December 6, 1999, contained 15 recommendations for the Act. A chronology of key amendments to the 1990 Act is provided below.

Legislative Timeline: *Members' Conflict of Interest Act*

The *Members' Conflict of Interest Act* has been amended several times and reviewed once by a parliamentary committee. The most significant amending legislation was enacted in 1992.

June 26, 1990: The ***Members' Conflict of Interest Act*** was introduced (SBC 1990, c. 54). The Act was brought into force, effective December 1, 1990 and Ted Hughes was appointed as Acting Commissioner, effective October 1, 1990 (OIC 1512-1990). Hughes would later be appointed for a full five-year term (OIC 789-1991).

June 23, 1992: The *Member' Conflict of Interest Amendment Act, 1992* was passed (SBC 1992, c. 64). The bill amended definitions for conflict of interest, post-employment rules, filing and disclosure processes, and Member conduct and penalties. Most of the changes were brought into force November 4, 1992 (BC Reg 424/92).[1]

December 15, 1992: A minor amendment to the Act consequential on the new *Labour Relations Code* (SBC 1992, c. 82) was passed.

July 15, 1999: A subsection containing pension provisions was removed from the Act (SBC 1999, c. 44).

August 27, 2001: The Act was amended to clarify provisions for a Member entrusting his or her business to a trustee (SBC 2001, c. 43).

May 9, 2002: The definition of "private corporation" was amended consequential on the *Securities Amendment Act* (SBC 2002, c. 32).

October 30, 2003: A minor amendment to the Act consequential on the *Business Corporations Amendment Act, 2003* (SBC 2003, c. 70) was passed.

March 15, 2007: Amendments to the Act consequential on the *Public Inquiry Act* (SBC 2007, c. 9) were passed. The Commissioner was also granted new powers to enforce summons and to punish for contempt.

November 24, 2011: The definition of spouse was amended by the *Family Law Act* to include persons living "in a marriage-like relationship" (SBC 2011, c. 25). The Act previously defined spouse as "a person living with a member as husband and wife."

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[1] Two sections of the amending legislation were never brought into force and were later repealed pursuant to the *Supplements Repeal Act* (SBC 2006, c. 33). These included changes to section 8 (Carrying on business) and one transitional provision.

The Consultation Process

Briefings

On May 2, 2012, the Conflict of Interest Commissioner, Paul Fraser, Q.C., appeared before the Committee as the first witness for the statutory review. The Commissioner presented a written submission identifying areas of potential reform. Two additional submissions containing specific proposals to amend the Act were also forwarded to the Committee on May 31, 2012 and July 31, 2012. The Commissioner made a second presentation to the Committee on July 31, 2012 to discuss the proposals and to answer questions.

In addition, expert witnesses were invited to provide briefings to the Committee on the Act. Two meetings were held in Victoria on June 20, 2012 and June 26, 2012 to hear presentations from the following witnesses:

Dr. Gregory Levine
Dr. J. Peter Meekison
David Mitchell (by teleconference)
Dr. Patrick Smith, Simon Fraser University
Lynda Tarras, BC Public Service Agency

The schedule of meetings is contained in Appendix A.

Written Submissions

The Committee accepted written submissions from the public from May 10, 2012 to June 29, 2012. A public call for submissions was posted on the Committee website and an advertisement was placed in several provincial daily and ethnic newspapers. Members of the Association for Former MLAs of BC were also invited to provide commentary on the Act. Public input was accepted via a web-based submission form, as well as by email, fax, and regular mail.

Ten written submissions were received during the consultation period from the following private citizens:

Clare Marie Belanger
Natasha Caverley
William Cramb
Robert Haslett
Richard Holmes
Dale Mitchell
Stefan Morales
George Morfitt
Roy Roope
Shahin Yousefi

Part 1 – Scope of the Act

Ethics and Integrity

The Act provides a legislative framework for dealing with conflicts of interest involving Members of the Legislative Assembly. It defines conflict of interest and prohibits a Member from exercising an official power, or performing an official duty, if the Member has a conflict of interest or an apparent conflict of interest.

During its inquiry, the Committee received submissions calling for the Act to be expanded to include some kind of statement regarding Members' integrity and ethical behaviour. It was pointed out that situations may arise when a Member's conduct is ethically questionable but not in breach of an existing provision in the Act. The Commissioner's submission, for example, called for an ethics and integrity dimension to be formally recorded in the Act, along with amendments that would articulate ethical standards, add a purpose clause, and rename the title of both the Act and the Commissioner. The Northwest Territories' *Legislative Assembly and Executive Council Act* was also cited as containing enforceable provisions that would require a Member to: (a) perform his or her duties of office with honesty and arrange his or her private affairs in such a way as to maintain and enhance public confidence and trust in the integrity and ethical conduct of the member; (b) arrange his or her private affairs and act generally to prevent any conflict of interest from arising; and (c) make all reasonable efforts to resolve.

The Committee considered these proposals and agreed that the Act should include guidelines setting out broad obligations of Members rather than a preamble. It favours enforceable provisions like those contained in the Northwest Territories statute.

Recommendation

1. Add a section setting out broad obligations of Members similar to section 75 of the Northwest Territories' *Legislative Assembly and Executive Council Act.*

Plenary Jurisdiction

The Commissioner's powers of investigation under the Act are request-driven, initiated by Members of the Legislative Assembly, members of the public, the Legislative Assembly, or the Executive Council (cabinet).

The Commissioner's submission to the Committee noted that other jurisdictions have legislation granting commissioners independent powers to investigate possible contraventions

of the Act. The Commissioner advised that such plenary powers were not necessary in British Columbia as members of the public currently have the ability to request the Commissioner's opinion on matters. He also explained that it is preferable for the Commissioner's advisory and investigative roles to remain separate and distinct.

After considering the matter, the Committee agrees with the Commissioner and does not recommend amending the Act to include powers of plenary jurisdiction.

Potential Application of the Act to Unelected "Public Office Holders"

The Act applies to Members of the Legislative Assembly, including Members of Executive Council (cabinet ministers) and parliamentary secretaries. It does not apply to unelected public office holders, including senior ministry officials, political staff, and other persons appointed by Lieutenant Governor in Council pursuant to the *Public Service Act*.

During the consultations on the *Members' Conflict of Interest Act*, the Committee considered proposals for the Act to be amended to include jurisdiction over appointed public office holders such as deputy ministers, senior government officials, ministerial assistants, CEOs of Crown corporations, and other appointees. Some submissions to the Committee called for the Act to be extended to these officials as they are privy to confidential information and may potentially exert influence over policy decisions and legislative initiatives. Others pointed out that guidelines for conduct currently exist for persons appointed to the public service. In her presentation to the Committee, Lynda Tarras, head of the BC Public Service Agency, explained that the province is well covered by the existing framework, which includes an Oath of Employment, Standards of Conduct, and Post-employment Restrictions for Senior Management.

After due deliberation, the Committee agreed that unelected public office holders should not be required to follow the same statutory guidelines as that of Members. Nonetheless, the Act should be amended to include some provisions for Deputy Ministers, Assistant Deputy Ministers, Associate Deputy Ministers, Ministerial Assistants, and any other members of a Minister's staff who have routine access to cabinet documents and other sensitive ministry information. At a minimum, the Committee thinks that these public office holders could be required to file with the Commissioner, on an annual basis and upon their departure from the public service, a signed statement affirming that they have reviewed the Oath of Employment and the Standards of Conduct and agree to be bound by them. The Committee also endorses granting the Commissioner the power to receive complaints, conduct investigations, and impose sanctions for breaches of the Oath of Employment and/or Standards of Conduct.

The Committee also considered whether the Act should be extended to CEOs of Crown Corporations. Mindful that Crown corporation boards maintain their own guidelines for ethics and practice, the Committee encourages the government to work with such boards to review the adequacy of existing guidelines.

Recommendations

2. Require Deputy Ministers, Assistant Deputy Ministers, Associate Deputy Ministers, Ministerial Assistants, and any other members of a Minister's staff who have routine access to cabinet documents and other sensitive ministry information to file annually, and upon leaving the public service, a signed statement with the Commissioner affirming that they have reviewed the Oath of Employment and the Standards of Conduct and agree to be bound by them.
3. Empower the Commissioner to receive complaints, conduct investigations, and impose sanctions for breaches of the Oath of Employment and/or Standards of Conduct involving such persons.

Potential Application of the Act to Municipal Officials

Currently, the Act does not apply to elected representatives of local governments, such as municipalities and regional districts. Conflict-of-interest guidelines for local government officials are currently prescribed in the *Community Charter* (Part 4 Division 6) and the *Vancouver Charter* (sections 145.2-145.92).

During its consultations, the Committee heard requests for the Act to be amended to apply to municipal officials. Dr. Patrick Smith, for example, noted how previous Commissioners have reported significant numbers of "non-jurisdictional" requests for advice from local governments. He recommended that the Commissioner's jurisdiction be expanded to include representatives of local government. Other written submissions to the Committee called for the legislation to be widened to include any elected officials in the province along with their executive staff.

The Commissioner's submission, however, cautioned the Committee against expanding the scope of the Act to include local governments. Noting that the topic has been previously raised by former commissioners and the Union of British Columbia Municipalities, the Commissioner stated that existing conflict-of-interest provisions in the *Community Charter* are comprehensive. The UBCM has also made it clear in their policy papers that it is difficult to apply the *Members' Conflict of Interest Act* because the legislation was developed specifically for MLAs.

After considering the matter, the Committee agrees with the Commissioner that the Act need not be amended at this time to cover local government officials. However, the Committee encourages the provincial government to engage with the UBCM to determine how conflict-of-interest oversight can be better administered at the local government level.

Post-employment Matters

Section 8 contains post-employment rules for former members of the Executive Council (cabinet ministers) and former parliamentary secretaries. Under the Act, both are subject to a 24-month "cooling off" period after the date when they ceased to hold office. During that time, they must not accept any government-approved contracts or benefits.

During the consultations on the Act, the Committee considered whether current post-employment guidelines should be revised. For example, it was noted that the guidelines were often overly-restrictive for parliamentary secretaries, whose responsibilities are significantly less than that of members of Executive Council, and limited to particular matters. The Committee also contemplated changing the 24-month post-employment prohibition for Members of the Executive Council.

After deliberation, the Committee agrees that the existing 24-month post-employment restriction for parliamentary secretaries is restrictive and proposes that it be limited to a 6-month period and to matters that were the focus of the Parliamentary Secretary's specific responsibilities. The Committee does not endorse any change to post-employment rules for Members of the Executive Council.

In addition, the Committee suggests a minor revision to section 8 to clarify that "ceased to hold office" refers to holding office as a member of the Executive Council or as a parliamentary secretary and not to the term of office as a Member of the Legislative Assembly. In correspondence to the Committee, the Commissioner confirmed that past practice for the office has been to interpret this section accordingly, and that a simple change in wording would remove any uncertainty.

Recommendations

4. Continue the post-employment restriction for a former parliamentary secretary but limit the restriction period to 6 months and to matters that were the focus of the parliamentary secretary's specific responsibilities.
5. Amend section 8 to clarify that "ceased to hold office" refers to holding office as a member of the Executive Council or as a parliamentary secretary.

Part 2 – General Matters

Private Interests

The Act defines when a Member has a conflict of interest, or an apparent conflict of interest, for the purposes of the Act. Section 2(1) states that a Member has a conflict of interest when "the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest." Section 2(2) stipulates that a Member has an apparent conflict of interest "if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest."

The Commissioner informed the Committee that section 2 only provides for activities that further the private interests of individual Members, and not others such as spouses, family members, friends, or business associates. The Commissioner explained that past office practice has been to interpret "private interest" to include the private interest of individuals other than the Member, and that this should be made explicit in the legislation for greater clarity.

The Committee sees merit in this proposal and endorses amending the Act to clarify that the improper furthering of the private interest of another person or entity is included in the prohibition.

Recommendation

6. Include a prohibition against a Member improperly furthering the private interest of another person or entity.

Insider Information

Section 4 clarifies a Member's obligations respecting the proper use of insider information, which is defined to include information gained by a Member in the execution of his or her office and not available to the general public. Under the Act, a Member is prohibited from using insider information to further his or her private interest.

Additional restrictions on the use of insider information were proposed in the Commissioner's submission to the Committee. It was recommended that the Act be amended to include a prohibition against a Member using and communicating insider

information to improperly further the private interest of another person or entity. British Columbia, it was noted, is one of the only jurisdictions in Canada that does not have such a prohibition.

The Committee concurs with this proposal and suggests the Act be revised accordingly.

Recommendation

7. Add a prohibition against a Member using and communicating insider information to improperly further the private interest of another person or entity.

Influence

Section 5 states that a Member must not use his or her office to seek to influence a decision, to be made by another person, to further the Member's private interest.

The Commissioner recommended that section 5 be expanded to explicitly prohibit a Member, when carrying out the duties of office, from using his or her influence to improperly further the private interest of another person or entity. To make such a prohibition explicit in the Act, the Commissioner proposed new wording for section 5.

The Committee agrees that the Commissioner's proposal is reasonable and warrants revision to the Act.

Recommendation

8. Include a prohibition against a Member using his or her office to influence or attempt to influence a decision to improperly further the private interest of another person or entity.

Procedure on Conflict of Interest

The Act describes the procedure to be followed by a Member faced with a possible conflict of interest. Section 10(1) states that "a member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter, (a) disclose the general nature of the conflict of interest, and (b) withdraw from the meeting without voting or participating in the consideration of the matter."

During the inquiry, the Commissioner proposed that the Act be clarified to indicate that the obligation of a Member to avoid conflict of interest extends beyond his or her formal participation in the decision-making process. To this end, the Commissioner recommended that a new paragraph be added to section 10(1) obligating the Member to refrain at all times from attempting to the influence the matter.

The Committee considered existing procedures and agrees that changes are needed to clarify the obligations of Members. Accordingly, the Committee supports amending section 10(1) of the Act to prohibit a Member attempting to influence a matter that is the subject of a conflict of interest. In addition, the Committee suggests adding a requirement for a Member facing a conflict or potential conflict-of-interest situation to make a disclosure to the Clerk of the Legislative Assembly in the case of proceedings in the House or in a parliamentary committee. Moreover, in the case of Executive Council or a cabinet committee, the disclosure should be made to the recording secretary.

Recommendations

9. Include a prohibition against a Member attempting to influence a matter that is the subject of a conflict of interest.

10. Add a requirement for a Member facing a conflict or potential conflict-of-interest situation to make a disclosure to the Clerk of the Legislative Assembly in the case of proceedings in the House or in a Parliamentary Committee, or to the recording secretary in the case of Executive Council or a Cabinet Committee.

Gifts and Benefits

Section 7 prescribes rules around accepting extra benefits. Under the Act, a Member is restricted from accepting fees, gifts, or extra benefits connected, either directly or indirectly, with the performance of his or her duties of office. A Member, however, may accept a gift or personal benefit received as an incident of the protocol or social obligations that normally accompany the responsibilities of office. Any gift or personal benefit to a Member exceeding $250 in value, or if the total value received directly or indirectly from one source in any 12-month period exceeds $250, must be reported to the Commissioner in a disclosure statement, in the form prescribed by the regulation.

The Commissioner recommended clarifying the rules around accepting extra benefits. In particular, he proposed that a definition of a "gift or personal benefit" be included in the Act, that family members be included in the prohibition, and that a 30-day time frame be adopted for disclosing receipts of gifts and benefits. With respect to the $250 threshold for disclosing gifts, the Commissioner recommended that this amount remain unchanged.

The Committee considered the adequacy of existing guidelines surrounding extra benefits and concurs that a definition of a "gift or personal benefit" needs to be included in the Act. As well, an amendment is needed to clarify that gifts and benefits given to family members are inappropriate if the intention was to influence the Member. On the threshold for disclosing gifts, the Committee supports the current amount.

Recommendation

11. Add a definition of a "gift or personal benefit"; include family members in the prohibition if the intention of the gift or benefits was to influence the Member; and adopt a 30-day time frame for disclosing receipts of gifts and benefits.

Carrying on a Business or Profession

Under section 9, members of the Executive Council are prohibited from engaging in outside employment if specified activities are likely to conflict with their public duties. The prohibition restricts the ability of a member of the Executive Council to engage in employment or in the practice of a profession; carry on a business; or hold an office or directorship other than in a social club, religious organization, or political party.

The Commissioner reported to the Committee that his office has received a number of requests for permission from members of the Executive Council to attend to their practice occasionally in order to preserve their professional standing (e.g. physicians). The advice given by the office consistently acknowledges that the performance of the minimum activities required by law or by the governing bodies of the member's profession or occupation does not constitute "carrying on a business" or engaging in employment or in the practice of a profession. Accordingly, the Commissioner recommended that the Act be amended in order to avoid unnecessary damage to a member's professional standing since certain professions terminate the practitioner's right to practice after a certain non-practicing period.

The Committee finds the Commissioner's request to be reasonable and supports an amendment to the Act clarifying that maintaining professional qualifications is permissable under the Act.

Recommendation

12. Stipulate that activities required in order for a member of Executive Council to maintain his or her professional qualifications do not constitute "carrying on a business".

Part 3 – Disclosure Matters

Commissioner's Discretion – Consistency between the Act and Regulation

Section 16 requires a Member, within 60 days of being elected, and thereafter annually, to file with the Commissioner a confidential disclosure statement in the form prescribed by the regulation. Pursuant to the Act, the disclosure statement includes a declaration of the nature of the assets, liabilities, and financial interests of a Member, the Member's spouse and minor children, and private corporations controlled by any of them.

The Commissioner's submission to the Committee called for changes to provide greater consistency between the Act and the regulation. It noted that the disclosure form was recently updated to provide greater clarity and to exclude certain assets, liabilities and financial interests from disclosure, such as children's student loans. The Commissioner said that it would be appropriate for the Act to be amended to include wording which makes it clear that the Commissioner has discretion to exclude certain assets, liabilities, or financial interests (e.g. assets/liabilities under a certain threshold) from disclosure obligations.

The Committee sees this as an appropriate change and supports amending the Act to provide greater consistency between the Act and the regulation.

Recommendation

13. Provide the Commissioner with clear discretion to exclude certain assets, liabilities, or financial interests (e.g. assets/liabilities under a certain threshold) from disclosure obligations.

Manner of Disclosure

The current process for filing Members' disclosure statements with the Commissioner is primarily paper-based. Previous annual reports of the Commissioner have described the process as labour intensive for the office, and time-consuming and onerous for Members.

The Committee heard how the Commissioner's office is working to replace the paper-based filing system with an electronic one. The new electronic filing system, the Commissioner reported, will reduce paper use, increase administrative efficiency, and be simpler for Members. The Committee was asked to recommend that the Act be amended to give the Commissioner explicit authority to direct the manner of disclosure to allow for mandatory electronic filing.

The Committee supports this change and endorses amending the Act to facilitate the office's transition to an electronic filing system.

Recommendation

14. Allow the Commissioner to direct the manner of disclosure to allow for mandatory electronic filing.

End of Term Declaration/Exit Disclosure Statement

Disclosure provisions in the Act only apply to sitting Members. The Act does not require departing Members – such as those who resign before their term is over or those defeated in an election – to disclose their financial interests for the period between their last disclosure statement and the date they leave office.

The Commissioner's submission pointed out that, depending on the timing of a Member's departure, his or her disclosure statement could be several months out of date. Accordingly, it may be appropriate to include an "exit" disclosure statement in order to ensure transparency of a Member's financial interests for the entire term of office as an elected official. The Commissioner suggested that a Member could be required to sign a declaration stating that they have reviewed their most recent disclosure statement and confirm that it is still accurate. Those Members with material changes that have not been reported would be required to file a statement of material change. It was further recommended that these statements be submitted within 60 days of leaving office and that Members' compliance with this requirement be publicly reported, perhaps as a notation on their most recent public disclosure statement.

After due deliberation, the Committee agreed that it is reasonable to add a new provision to the Act requiring all departing Members to submit an exit disclosure statement to the Commissioner. An inclusive definition of a "departing Member" should also be clearly stated in the Act.

Recommendation

15. Require all Members leaving office to submit an end-of-term declaration or "exit" disclosure statement to the Commissioner, including Members who are defeated or are not seeking re-election in an election or by-election, as well as Members who resign or are recalled from office before their term is over.

Online Access to Public Disclosure Statements

Section 17 of the Act requires the Commissioner to prepare a public disclosure statement for a Member containing information provided in the Member's confidential disclosure statement, as well as a statement of any gifts or benefits reported to the Commissioner since the Member's last filing. Certain information is not included in the public disclosure statement, such as the Member's residential address and other personal information. The Commissioner must, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly, where it is made available to any person for inspection.

The Commissioner's submission recommended that the Act be amended to require public disclosure statements to be posted online. Providing online access to the statements, it was noted, would bring greater openness and transparency.

The Committee considered this request and agrees that public disclosure statements need to be made accessible in an electronic format, as well as available for public viewing in print form.

Recommendation

16. Require public disclosure statements to be posted online.

Part 4 – Investigation and Inquiry Matters

Preliminary Review/Investigation Stage

Section 21 of the Act empowers the Commissioner to conduct a formal inquiry when requested for an opinion by a Member, a member of the public, the Executive Council, or the Legislative Assembly under section 19. During an inquiry, the Commissioner has the power to order production of documentary records and to summon individuals to attend and have their evidence taken under oath.

In his submission, the Commissioner observed that very few formal inquiries have been conducted in the 20 years the office has been in existence. Rather, information is typically gathered informally by the Commissioner. The Commissioner requested that section 21 be amended to include an option for a preliminary review or investigation to be conducted before proceeding to the inquiry stage.

The Committee supports this recommendation, particularly since a review or investigation stage could help filter out any frivolous or baseless allegations levelled against a Member.

Recommendation

17. Include an option for the Commissioner to conduct a preliminary review or investigation before proceeding to the inquiry stage.

Confidentiality of Information/Applicability of *Freedom of Information and Protection of Privacy Act*

The Committee learned that it is unclear what the status of the Conflict of Interest Commissioner is under the *Freedom of Information and Protection of Privacy Act*. Despite being designated under section 14 of the *Members' Conflict of Interest Act* as an "Officer of the Legislative Assembly" the Commissioner is listed as an "Officer of the Legislature" in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*.

The Commissioner requested that the *Members' Conflict of Interest Act* be amended to include a section stipulating that information brought to the Commissioner's office must remain confidential. He also asked that necessary legislative changes be made to clarify the status of the Commissioner in the enabling legislation and the *Freedom of Information and Protection of Privacy Act*.

The Committee considered this request and concurs that the Act should be amended to guarantee appropriate privacy protection for information brought to the Commissioner's office, and to ensure consistency in the legislation.

Recommendation

18. Stipulate that information brought to the Commissioner's office must remain confidential, and clarify the relationship between the Act and the *Freedom of Information and Protection of Privacy Act*.

Release of Opinions to Members of the Public

Section 19 of the Act authorizes the Commissioner to provide an opinion on questions referred by a Member, a member of the public, the Executive Council, or the Legislative Assembly. Section 19(2) states that "A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention."

The Commissioner's submission pointed out that the Act is silent on how an opinion requested by a member of the public under section 19(2) is to be released. As a result, it is not clear what the Commissioner's obligations are with respect to keeping the allegations and the opinion confidential, and how the opinion should be reported. The Commissioner explained that past practice has been to treat requests from the public as confidential if the matter does not proceed past the preliminary stage. However, the person requesting the opinion is advised that if they make public reference to the opinion, the Commissioner considers confidentiality to have been waived and reserves the right to post the opinion on the office website in its entirety upon providing notice to both parties. The Commissioner recommended that the Act be amended to reflect this practice.

To address any ambiguity, the Committee supports amending the Act to clarify how and under what conditions the Commissioner may release opinions provided to members of the public.

Recommendation

19. Clarify how, and under what conditions, opinions provided to members of the public will be released.

Suspension of Inquiry

The current Act does not contain provisions requiring the Commissioner to suspend an investigation or inquiry if the same matter is the subject of a criminal investigation.

In order to avoid compromising ongoing criminal or quasi-criminal investigations, and to safeguard the rights of the parties to a fair trial, the Commissioner advised that the Act should be amended to require the suspension of an investigation or inquiry in the event that the same matter is the subject of a criminal or other investigation.

This request was considered by the Committee and found to warrant revision to the Act.

Recommendation

20. Require the suspension of an investigation or inquiry in the event that the same matter is the subject of a criminal or other investigation.

Penalties

Penalties for a Member found to be in contravention of the Act are prescribed in section 22. The Commissioner may recommend, in a report that is laid before the Legislative Assembly, that the Member be reprimanded, suspended for a period specified in the report, or fined an amount not exceeding $5,000. The Commissioner also may recommend that that the Member's seat be declared vacant until an election is held in the Member's electoral district.

During its inquiry, the Committee considered the adequacy of existing penalties for contraventions of the Act. Submissions to the Committee suggested that more stringent penalties, such as recompense for significant financial benefits attained due to a conflict of interest, may be needed. For example, in the Commissioner's opinion, the maximum $5,000 fine for breaching the Act is not an appropriate ceiling, and does not reflect the seriousness with which such egregious breaches should be viewed. It was recommended that this fine be increased to $20,000, an amount comparable to the average maximum penalty in other Canadian jurisdictions.

After due deliberation, the Committee agrees that the maximum fine be increased to $10,000. The Committee also supports a minor revision to section 22(1)(f) so that the words "election or by-election" be inserted in place of "election".

Recommendations

21. Increase the maximum fine the Commissioner can recommend from $5,000 to $10,000.

22. Replace the word "election" with "election or by-election" in section 22(1)(f).

Protection of Commissioner

Section 23 of the Act contains provisions protecting the Commissioner in the performance of his or her duties. It states that "No action of any kind lies against the commissioner for anything he or she does under this Act."

The Commissioner proposed that section 23 be amended to extend this immunity to former commissioners, current and former employees, and those who provide information to the Commissioner.

The Committee considers this to be a reasonable request and proposes that the Act be amended to extend immunity.

Recommendation

23. Expand the scope of protection to former Commissioners, current and former employees, and those who provide information to the Commissioner.

Compellability

Conflict-of-interest legislation in some other Canadian jurisdictions protects commissioners from being compelled to give evidence as a witness in civil proceedings. No similar provisions currently exist in the BC statute.

To remedy this, the Commissioner proposed adding provisions to the Act that would ensure that the Commissioner is not a compellable witness in civil proceedings. This change was described as further protecting the integrity of the Commissioner's work.

The Committee views this proposal as worthy of inclusion in the Act and recommends appropriate amendment.

Recommendation

24. Stipulate that the Commissioner is not a compellable witness in civil proceedings.

Legal Fees/Costs

The current Act does not contain any provisions allowing the Commissioner to recommend reimbursement to a Member for legal costs incurred in an investigation or inquiry.

Noting that an inquiry under the Act is likely to result in the Member having to retain legal counsel, the Commissioner recommended that the Act be changed to permit a process by which legal fees or costs could be reimbursed to a Member. It was suggested that the Act be amended to allow the Commissioner to recommend that a person who was the subject of an investigation or inquiry under the Act be reimbursed in an amount approved by the Commissioner for his or her legal costs in respect of such investigation or inquiry.

After discussing the matter, the Committee sees merit in adding a mechanism for reimbursement of legal fees or costs to the Act. Adding such a provision, it was noted, would not be akin to an indemnity whereby the costs of a defence would be covered in advance and for all cases. Rather, the Commissioner would be empowered with discretion to review individual cases and to recommend reimbursement for expended fees or costs wherever appropriate.

Recommendation

25. Allow the Commissioner to recommend that a person who was the subject of an investigation or inquiry under the Act be reimbursed in an amount approved by the Commissioner for his or her legal costs in respect of such investigation or inquiry.

Investigations/Inquiries Concerning Former Members

Under the current statute, the Commissioner does not have jurisdiction to commence an investigation or inquiry into the conduct of a former Member. The Act is also silent on whether the Commissioner has jurisdiction to continue an investigation underway against a person who resigns or is defeated in an election.

The Commissioner's submission stated that, in the case of continuing an investigation or inquiry, it is in the public interest that a Member not be able to "resign out" of his or her accountability. It also is in the former Member's interest to have an opportunity to be exonerated. Accordingly, the submission recommended that Act be amended to allow the Commissioner to continue an investigation or inquiry after a Member has ceased to hold office, if either the complainant or the Member requests its continuance. In addition, it was recommended that the Commissioner be empowered to commence an examination into the conduct of a former Member if allegations only come to light after the Member leaves office.

A one-year time limit was proposed for allegations to be brought forward once the Member ceases to hold office.

The Committee agrees that amendments to the Act are warranted to permit the Commissioner to continue and to commence investigations and inquiries into former Members. The expansion of the Commissioner's powers in these areas will strengthen accountability provisions in the Act.

Recommendation

26. Allow the Commissioner to continue an investigation or inquiry after a Member ceases to hold office, and to commence an investigation or inquiry involving a former Member within one year of the person ceasing to hold office.

Part 5 – Miscellaneous

Definitions

For added clarity, the Commissioner's submission called for updates to some definitions contained in section 1. These included replacing the current definition of "child" in the Act with a definition for "dependent child" meaning "a child of a member or his or her spouse who has not reached the age of 18 years or who has reached that age but is primarily dependent on the member or the member's spouse for financial support". The Commissioner recommended that all references to "minor children" in the Act and regulation be replaced with the "dependent child".

In addition, the Commissioner proposed updating the definition of "private corporation" to mean "a corporation none of whose shares are publicly traded securities." It was also proposed that a subsection (d) be added to the definition for "private interest" that states: "where the interest is so insignificant in its nature that a decision affecting the interest cannot reasonably be regarded as likely to influence the member."

The Committee agrees with these changes and endorses incorporating these definitions into the Act.

Recommendations

27. Replace the definition of "child" with a definition of "dependent child".
28. Revise the existing definitions of "private corporation" and "private interest".

Terms, Appointment, and Reappointment of the Commissioner

The Act describes the processes used for the appointment, removal, and compensation of the Commissioner. Section 14(2) states that "On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner." Section 14(4) specifies that "The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly." Currently, the Commissioner is appointed for a term of 5 years, which may be renewed for one or more additional terms. Compensation is paid as may be set by the Lieutenant Governor in Council.

The Commissioner's submission proposed that section 14 be amended:

- to require that the appointment of the Commissioner require the unanimous recommendation of the Special Committee to Appoint a Conflict of Interest Commissioner (rather than a majority committee decision), followed by the existing requirement of ratification by two-thirds of the Legislative Assembly.
- to include provisions setting out the reappointment process. The term should remain as a five year renewable term.
- so that two-thirds rather than a simple majority of the Legislative Assembly is required to remove the Commissioner.
- so that the Commissioner's compensation is linked to that of the Chief Judge of the Provincial Court in the same manner as the Auditor General.
- to allow for an *ad hoc* Commissioner to be appointed in the event that the Commissioner himself or herself is in a conflict.

The Commissioner also proposed that the Committee give consideration to pension matters, including whether pension eligibility should be entrenched in the Act.

The Committee considered these proposed changes and agreed that some revisions to section 14 are warranted. With respect to the appointment and reappointment of the Commissioner, the Committee agrees that a person should be recommended to the office based on the unanimous recommendation of an all-party parliamentary committee. Furthermore, it is suggested that this committee be a permanent standing committee of the Legislative Assembly, created for the explicit purpose of selecting statutory officers, including the Commissioner. Moreover, the said committee should be empowered to meet as needed and be granted the ability to address compensation issues such as remuneration and pension eligibility.

Regarding the process used to suspend or to remove the Commissioner, the Committee agrees that the Act should be amended to require a resolution passed by two-thirds of the Members present in the Legislative Assembly.

The Committee also endorses a change that would permit the appointment of an *ad hoc* Commissioner in the event that the existing Commissioner is unable to undertake his or her duties due to an actual or perceived conflict. It is recommended that the power to appoint an *ad hoc* Commissioner be vested with the Chief Judge of the Province of British Columbia.

Recommendations

29. Require the appointment and reappointment of the Commissioner to be based on the unanimous recommendation of an all-party parliamentary committee.
30. Require a resolution passed by two-thirds of the Members present in the Legislative Assembly to suspend or remove the Commissioner.
31. Allow for the appointment of an *ad hoc* commissioner by the Chief Judge of the Province of British Columbia in the event that the existing Commissioner is in a conflict.

Contracts with the Government

In addition to the *Members' Conflict of Interest Act*, the provincial *Constitution Act* also contains several sections relating to Members' conduct. Topics covered in the latter Act include prohibited office or contract (section 25), exceptions to prohibitions (section 26), use of vehicles by Cabinet members (section 26.1), and procedure on prohibition (section 27).

The Commissioner's submission pointed out that these provisions are still applicable to Members by virtue of section 19 of the *Members' Conflict of Interest Act*, which allows allegations of a breach of section 25 of the *Constitution Act* to be reviewed by the Commissioner. For greater clarity, it was recommended that the *Members' Conflict of Interest Act* be amended to remove references to section 25 of the *Constitution Act*, and that provisions setting out the restrictions on Members' contracts with the government be included instead in the former Act.

The Committee reviewed this proposal and agrees that references to section 25 of the *Constitution Act* can be removed from *Members' Conflict of Interest Act*. It supports including provisions setting out restrictions on Members' contracts with the government in the *Members' Conflict of Interest Act*, provided that it is clear that these restrictions only apply to the Member (as is now the case under the *Constitution Act*) and not to the spouse or dependent children.

Recommendation

32. Remove references to section 25 of the *Constitution Act* and instead include provisions setting out the restrictions on Members' contracts with the government.

Periodic Review of the Act

The Act does not contain any provisions requiring periodic review by an all-party parliamentary committee. Like the current review, the first review of the Act by the Committee (1997-1999) was initiated by an order of reference of the Legislative Assembly.

To ensure that future statutory reviews take place on a more frequent basis, the Commissioner proposed that a mandatory review of the Act be required every seven years. Regularly scheduled reviews, it was explained, would help to keep the Act up-to-date and responsive to emerging issues.

The Committee sees merit in this proposal and recommends that the Act be amended to require a statutory review by a parliamentary committee once every seven years.

Recommendation

33. Require a mandatory review of the Act every seven years.

Retention and Destruction of Documents

The Act in its current form does not prescribe rules concerning the retention and destruction of documents related to Members.

The Commissioner's submission stated that the current office policy and practice regarding document retention and destruction was adopted pursuant to a recommendation of the Select Standing Committee on Finance and Government Services, which recommended in the December 2002 report, *Financial Review of the Independent Offices of the Legislative Assembly*:

> *That the private and confidential Member's Disclosure Statement received by the Conflict of Interest Commissioner be retained for a period of five years following the vacating of a Member's seat, and can then be disposed of, unless the affairs of the former MLA are under review by the Commissioner or some other public authority, in which case such records shall be retained until the completion of said review.*

The Commissioner proposed that this policy be formalized in the Act through amendment to reflect current office policy and practice.

The Committee agrees with this proposal and recommends that the legislation be revised to clarify the document retention and destruction schedule of the office.

Recommendation

34. Include a provision that sets out the retention and destruction periods for documents related to Members.

Summary of Recommendations

The Committee recommends to the Legislative Assembly that the provincial government implement the following recommendations for legislative amendments to the *Members' Conflict of Interest Act* (the Act):

Part 1 – Scope of the Act

1. Add a section setting out broad obligations of Members similar to section 75 of the Northwest Territories' *Legislative Assembly and Executive Council Act.*

2. Require Deputy Ministers, Assistant Deputy Ministers, Associate Deputy Ministers, Ministerial Assistants, and any other members of a Minister's staff who have routine access to cabinet documents and other sensitive ministry information to file annually, and upon leaving the public service, a signed statement with the Commissioner affirming that they have reviewed the Oath of Employment and the Standards of Conduct and agree to be bound by them.

3. Empower the Commissioner to receive complaints, conduct investigations, and impose sanctions for breaches of the Oath of Employment and/or Standards of Conduct involving such persons.

4. Continue the post-employment restriction for a former parliamentary secretary but limit the restriction period to 6 months and to matters that were the focus of the parliamentary secretary's specific responsibilities.

5. Amend section 8 to clarify that "ceased to hold office" refers to holding office as a member of the Executive Council or as a parliamentary secretary.

Part 2 – General Matters

6. Include a prohibition against a Member improperly furthering the private interest of another person or entity.

7. Add a prohibition against a Member using and communicating insider information to improperly further the private interest of another person or entity.

8. Include a prohibition against a Member using his or her office to influence or attempt to influence a decision to improperly further the private interest of another person or entity.

9. Include a prohibition against a Member attempting to influence a matter that is the subject of a conflict of interest.

10. Add a requirement for a Member facing a conflict or potential conflict-of-interest situation to make a disclosure to the Clerk of the Legislative Assembly in the case of proceedings in the House or in a Parliamentary Committee, or to the recording secretary in the case of Executive Council or a Cabinet Committee.

11. Add a definition of a "gift or personal benefit"; include family members in the prohibition if the intention of the gift or benefits was to influence the Member; and adopt a 30-day time frame for disclosing receipts of gifts and benefits.

12. Stipulate that activities required in order for a member of Executive Council to maintain his or her professional qualifications do not constitute "carrying on a business".

Part 3 – Disclosure Matters

13. Provide the Commissioner with clear discretion to exclude certain assets, liabilities, or financial interests (e.g. assets/liabilities under a certain threshold) from disclosure obligations.

14. Allow the Commissioner to direct the manner of disclosure to allow for mandatory electronic filing.

15. Require all Members leaving office to submit an end-of-term declaration or "exit" disclosure statement to the Commissioner, including Members who are defeated or are not seeking re-election in an election or by-election, as well as Members who resign or are recalled from office before their term is over.

16. Require public disclosure statements to be posted online.

Part 4 – Investigation and Inquiry Matters

17. Include an option for the Commissioner to conduct a preliminary review or investigation before proceeding to the inquiry stage.

18. Stipulate that information brought to the Commissioner's office must remain confidential, and clarify the relationship between the Act and the *Freedom of Information and Protection of Privacy Act*.

19. Clarify how, and under what conditions, opinions provided to members of the public will be released.

20. Require the suspension of an investigation or inquiry in the event that the same matter is the subject of a criminal or other investigation.

21. Increase the maximum fine the Commissioner can recommend from $5,000 to $10,000.

22. Replace the word "election" with "election or by-election" in section 22(1)(f).

23. Expand the scope of protection to former Commissioners, current and former employees, and those who provide information to the Commissioner.

24. Stipulate that the Commissioner is not a compellable witness in civil proceedings.

25. Allow the Commissioner to recommend that a person who was the subject of an investigation or inquiry under the Act be reimbursed in an amount approved by the Commissioner for his or her legal costs in respect of such investigation or inquiry.

26. Allow the Commissioner to continue an investigation or inquiry after a Member ceases to hold office, and to commence an investigation or inquiry involving a former Member within one year of the person ceasing to hold office.

Part 5 – Miscellaneous

27. Replace the definition of "child" with a definition of "dependent child".

28. Revise the existing definitions of "private corporation" and "private interest".

29. Require the appointment and reappointment of the Commissioner to be based on the unanimous recommendation of an all-party parliamentary committee.

30. Require a resolution passed by two-thirds of the Members present in the Legislative Assembly to suspend or remove the Commissioner.

31. Allow for the appointment of an *ad hoc* commissioner by the Chief Judge of the Province of British Columbia in the event that the existing Commissioner is in a conflict.

32. Remove references to section 25 of the *Constitution Act* and instead include provisions setting out the restrictions on Members' contracts with the government.

33. Require a mandatory review of the Act every seven years.

34. Include a provision that sets out the retention and destruction periods for documents related to Members.

Appendix A: Schedule of Meetings

April 18, 2012	Approval of the work plan
May 2, 2012	Office of the Conflict of Interest Commissioner: Paul Fraser, Q.C., Conflict of Interest Commissioner
June 20, 2012	Expert briefings
June 26, 2012	Expert briefings
July 31, 2012	Office of the Conflict of Interest Commissioner: Paul Fraser, Q.C., Conflict of Interest Commissioner; Alyne Mochan, Legal Officer
March 6, 2013	Deliberations
March 13, 2013	Approval of report

Appendix B: Documents Submitted

Office of the Conflict of Interest Commissioner

Recommendations for Amendments. Submission to the Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills. July 30, 2012.

Comparative Existing Legislation across Canada and Potential Amendments for Consideration by the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills. May 31, 2012.

Discussion and Materials - Potential Major Issues. Issues for Consideration by the Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills. May 2, 2012.

Expert Witnesses

Gregory J. Levine. Submission to the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills of the Legislative Assembly of British Columbia on the *Members' Conflict of Interest Act* (RSBC 1996 c. 287).

J. Peter Meekison. Presentation to the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills with respect to the *Members' Conflict of Interest Act* (RSBC 1996 c. 287). June 26, 2012.

Patrick J. Smith. "Building Trust, Ensuring Transparency and Conflict of Interest: What Might Next Steps in Ethics Legislation Look Like In British Columbia?" Invited Brief for the All-Party Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills of the Legislative Assembly of British Columbia on Review of the *Members' Conflict of Interest Act* (RSBC, 1996 c. 287).

Lynda Tarras. Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills: Review of *Members' Conflict of Interest Act*. June 26, 2012.

Appendix C: *Members' Conflict of Interest Act* (RSBC 1996, c. 287)

Contents

1. Definitions
2. Conflict of interest
3. Conflict of interest prohibition
4. Insider information
5. Influence
6. Activities on behalf of constituents
7. Accepting extra benefits
8. Former members of Executive Council and former parliamentary secretaries
9. Carrying on business
10. Procedure on conflict of interest
11. Performance of responsibilities by minister
12. Voidability of transaction or procedure
13. Application for restitution
14. Commissioner
15. Annual report
16. Disclosure statement
17. Public disclosure statement
18. Commissioner's opinions and recommendations
19. Commissioner's opinion on referred question
20. Special assignments
21. Inquiry
21.1 Power to enforce summons and punish for contempt
22. Penalties
23. Protection of commissioner
24. Appropriation
25. Offence Act
26. Power to make regulations

Definitions

1 In this Act:

"**child**" includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family;

"**commissioner**" means the person appointed under section 14;

"**member**" means a member of the Legislative Assembly or of the Executive Council, or both;

"**private corporation**" means a corporation, all of whose issued and outstanding securities are subject to restrictions on transfer and are beneficially owned directly or indirectly by not more than 50 persons;

"**private interest**" does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

(a) applies to the general public,

(b) affects a member as one of a broad class of electors, or

(c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"**spouse**" means a person who is married to a member or a person who is living with a member in a marriage-like relationship, but does not include a person who is separated and living apart from a member and who

(a) has entered into a written agreement under which they have agreed to live apart, or

(b) is subject to an order of the court recognizing the separation.

2. (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

3. A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

4. A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

5. A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

6. This Act does not prohibit the activities in which members normally engage on behalf of constituents.

7. (1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) If a gift or personal benefit referred to in subsection (2) exceeds $250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds $250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating

(a) the nature of the gift or benefit,

(b) its source, and

(c) the circumstances under which it was given and accepted.

FORMER MEMBERS OF EXECUTIVE COUNCIL AND FORMER PARLIAMENTARY SECRETARIES

8. (1) The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly

(a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,

(b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.

(2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(4) A former member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,

(b) make representations on his or her own behalf with respect to such a contract or benefit, and

(c) make representations on another person's behalf with respect to such a contract or benefit.

(5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(7) A former member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and in which the former member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.

(8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than $5 000.

EMPLOYED IN BUSINESS

9. (1) A member of the Executive Council must not

(a) engage in employment or in the practice of a profession,

(b) carry on a business, or

(c) hold an office or directorship other than in a social club, religious organization or political party

if any of these activities are likely to conflict with the member's public duties.

(2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.

(3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.

(4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

(a) the provisions of the trust must be approved by the commissioner,

(b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,

(c) the trustees must not consult with the member with respect to managing the trust property, and

(d) within 60 days after the formation of the trust, and after that annually, the trustees must provide the commissioner with a confidential report, in a form acceptable to the commissioner, disclosing the assets, liabilities and financial interests contained in the trust.

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

PROCEDURE ON CONFLICT OF INTEREST

10. (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in the consideration of the matter.

(2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record

(a) the disclosure,

(b) the general nature of the conflict of interest disclosed, and

(c) the withdrawal of the member from the meeting.

(3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,

(a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and

(b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.

(4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must

(a) make the central record available for inspection by any person without charge during normal business hours, and

(b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

PERFORMANCE OF RESPONSIBILITIES BY MINISTER

11. (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must

(a) refrain at all times from attempting to influence the matter, and

(b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.

(2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in subsection (1) for any matter with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

VOIDABILITY OF TRANSACTION OR PROCEDURE

12 The failure of any member to comply with section 10 does not of itself invalidate

(a) any contract or other financial transaction, or

(b) any procedure undertaken by the government with respect to a contract or other financial transaction

to which the failure to comply with section 10 relates, but the transaction or procedure is voidable at the instance of the government before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person who or organization that acted in good faith and without actual notice of the failure to comply with section 10.

APPLICATION FOR RESTITUTION

13. Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

COMMISSIONER

14. (1) There must be appointed a commissioner who is an officer of the Legislative Assembly.

(2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner.

(3) The commissioner holds office for a term of 5 years and may be reappointed for a further term or terms.

(4) The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.

(5) The commissioner must be paid compensation as may be set by the Lieutenant Governor in Council.

(6) If

(a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or

(b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting,

the Lieutenant Governor in Council may appoint an acting commissioner.

(7) The appointment of an acting commissioner under this section terminates

(a) on the appointment of a new commissioner under subsection (2),

(b) at the end of the period of suspension of the commissioner, or

(c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed,

whichever the case may be and whichever occurs first.

(8) The commissioner may employ or retain persons that the commissioner considers necessary and may

(a) specify their duties and responsibilities, and

(b) establish their remuneration and other terms and conditions of employment, or retainer.

(9) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to a person employed or retained under subsection (8).

(10) [Repealed 1999-44-85.]

ANNUAL REPORT

15. The commissioner must report annually on the affairs of his or her office to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly.

DISCLOSURE STATEMENT

16. (1) Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.

(2) Subject to subsection (2.1), the disclosure statement must contain

(a) a statement of the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and

(b) any other information that is prescribed by the regulations to be contained in the disclosure statement.

(2.1) The disclosure statement of a member of the Executive Council who has complied with section 9 (1) (b) by entrusting his or her business to one or more trustees need not contain a statement of the nature of the assets, liabilities and financial interests contained in the trust.

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the commissioner must ascertain whether any other corporation is an affiliate of the first named corporation, as determined under section 2 (1) to (4) of the *Business Corporations Act*.

(5) If the commissioner determines that there is an affiliate of the first named corporation, he or she must

(a) advise the member of the fact, in writing, and

(b) mention the fact in the public disclosure statement prepared under section 17.

(6) After filing a disclosure statement, the member must continue to disclose any material change in the assets, liabilities and financial interests of the member, the member's spouse and minor children and private corporations controlled by any of them by filing a statement of material change with the commissioner within 30 days of the material change.

(7) In subsection (6), **"material change"** means a material change as defined in the regulations.

PUBLIC DISCLOSURE STATEMENT

17. (1) After meeting with the member, and with the member's spouse if the spouse is available, the commissioner must prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the commissioner, in respect of the member, the spouse and minor children, except

(a) the municipal address or legal description of land that is primarily for the residential or recreational use of the member or the member's spouse or minor children, and

(b) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes.

(2) The public disclosure statement must contain a statement of any gifts or benefits that have been disclosed to the commissioner under section 7 (3).

(3) The commissioner must, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who must

(a) make the statement available to any person for inspection without charge and during normal business hours, and

(b) provide a copy of the statement on payment of a reasonable copying charge.

COMMISSIONER'S OPINIONS AND RECOMMENDATIONS

18. (1) A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the Constitution Act.

(2) The commissioner may make such inquiries as the commissioner considers appropriate and provide the member with a written opinion and recommendations.

(3) If the commissioner is of the opinion that a member has or may have a conflict of interest, the commissioner may, in the recommendations, specify the time by which the member must resolve the matter.

(4) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the consent of the member in writing.

(5) If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

COMMISSIONER'S OPINION BY REQUEST OR ON OWN INITIATIVE

19. (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting

out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention.

(3) The Executive Council may request that the commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council or a parliamentary secretary with the provisions of this Act or of section 25 of the *Constitution Act*.

(4) The Legislative Assembly may request that the commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act or of section 25 of the *Constitution Act*.

SPECIAL ASSIGNMENTS

20 At the request of the Lieutenant Governor in Council or the Legislative Assembly, the commissioner may undertake special assignments that he or she considers appropriate.

INQUIRY

21. (1) On receiving a request under section 19, and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.

(2) For the purposes of preparing an opinion under section 19 or conducting a special assignment under section 20, the commissioner may order a person to do either or both of the following:

(a) attend, in person or by electronic means, before the commissioner to give evidence on oath or affirmation or in any other manner;

(b) produce for the commissioner a record or thing in the person's possession or control.

(2.1) An order under subsection (2) must be in the form of a summons, served on the person by personal delivery or registered mail to the person's last known address.

(3) If the request for an opinion is made under section 19 (1), the commissioner must report his or her opinion to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly if it is in session or, if not in session, to the Clerk of the Legislative Assembly who must send a copy of it to all members of the Legislative Assembly.

(4) If it appears to the commissioner that the report may adversely affect the member, the commissioner must inform the member of the particulars and give the member the opportunity to make representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.

(5) If the commissioner is of the opinion that the member making the application under section 19 (1) had no reasonable and probable grounds for making it, the commissioner may state that in his or her report, and if he or she does so, the commissioner must report the matter to the Speaker who must lay the report before the Legislative Assembly and the Legislative Assembly may, after considering the matter, hold the member in contempt of the Legislative Assembly.

(6) If the request for an opinion is made under section 19 (3), the commissioner must report his or her opinion to the Secretary of the Executive Council.

POWER TO ENFORCE SUMMONS AND PUNISH FOR CONTEMPT

21.1. (1) The commissioner may make an order finding a person to be in contempt, and may impose a fine on or commit the person for contempt, if the person has been served with a summons under section 21 and fails or refuses to do any of the following:

(a) attend before the commissioner;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce records or things in the person's possession or control.

(2) The commissioner may call on the assistance of any peace officer to enforce an order made under this section, and, if called on, the peace officer may take any action that is necessary to enforce the order and may use such force as is reasonably required for that purpose.

PENALTIES

22. (1) If the commissioner finds

(a) after an inquiry under section 21 that a member has contravened section 3, 4, 5, 7, 8, 9 or 10 (1), or

(b) that a member has refused to file a disclosure statement within the time provided by section 16 or that a member has failed to comply with a recommendation of the commissioner under section 16 (3) or 19,

the commissioner may recommend, in a report that is laid before the Legislative Assembly

(c) that the member be reprimanded,

(d) that the member be suspended for a period specified in the report,

(e) that the member be fined an amount not exceeding $5 000, or

(f) that the member's seat be declared vacant until an election is held in the member's electoral district.

(2) The Legislative Assembly must consider the commissioner's report and respond to it as subsection (3) provides

(a) within 30 days after it is laid before the Legislative Assembly, or

(b) within 30 days after the next session begins if the Legislative Assembly is not in session.

(3) The Legislative Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a punishment other than the one recommended by the commissioner.

PROTECTION OF COMMISSIONER

23. No action of any kind lies against the commissioner for anything he or she does under this Act.

APPROPRIATION

24. Money required for the operation of the office of the commissioner may be paid out of the consolidated revenue fund.

OFFENCE ACT

25. Section 5 of the *Offence Act* does not apply to this Act.

POWER TO MAKE REGULATIONS

26. Subject to the approval of the Lieutenant Governor in Council, the commissioner may make regulations prescribing any matter that is contemplated in this Act to be prescribed by regulations.